

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**JOSE LUIS LARA and MICHELLE
GODOY,**

Plaintiffs,

V.

CIVIL ACTION NO. 4:18-cv-00813

**WILMINGTON SAVINGS FUND
SOCIETY FSB DBA CHRISTIANA
TRUST, NOT INDIVIDUALLY BUT
AS TRUSTEE FOR SECURITIZED
MORTGAGE ASSET LOAN TRUST
2015-1 REO and NEW PENN
FINANCIAL LLC DBA SHELLPOINT
MORTGAGE SERVICING,**

Defendants.

NOTICE OF REMOVAL

Wilmington Savings Fund Society FSB dba Christiana Trust, not individually but as trustee for Securitized Mortgage Asset Loan Trust 2015-1 REO (**Wilmington**) and New Penn Financial, LLC dba Shellpoint Mortgage Servicing (**Shellpoint**), remove the action filed by Jose Luis Lara and Michelle Godoy in the 189th District Court of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division, pursuant to 28 USC §§ 1331 and 1441.

I. STATEMENT OF THE CASE

1. On March 5, 2018, Lara and Godoy commenced a lawsuit styled *Jose Luis Lara and Michelle Godoy v. Wilmington Savings Fund Society FSB dba Christina Trust, not individually but as trustee for securitized mortgage asset loan trust 2015-1 REO and New Penn Financial LLC dba Shellpoint Mortgage Servicing* and assigned case number 2018-14339 in the

189th District Court of Harris County, Texas.¹ Lara and Godoy sue to enjoin the foreclosure sale of the real property located at 5131 Royal Cypress Dr., Katy, Texas 77449,² and allege the following causes of action: (1) no notice of default or intent to accelerate,³ (2) violation of section 1641(g) of the Truth in Lending Act (**TILA**), 15 USC § 1601 *et seq.*,⁴ (3) money had and received,⁵ (4) violation of sections 2605(f) of the Real Estate Settlement Procedures Act (**RESPA**), 12 USC § 2601 *et seq.*,⁶ (5) violation of sections 1024.39(a) and (b) of Regulation X, 12 CFR Part 1024,⁷ (6) breach of contract,⁸ and (7) quiet title.⁹ Lara and Godoy also seek a declaratory judgment¹⁰ and attorney's fees.¹¹

II. BASIS FOR FEDERAL QUESTION JURISDICTION

2. Under the "well-pleaded complaint rule," federal question removal is appropriate "when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). This court has federal-question jurisdiction pursuant to 28 USC §§ 1331 and 1441 because Lara and Godoy allege violations of TILA, RESPA and Regulation X. The court has supplemental jurisdiction over the remaining state law claims because they "form part of the same case or controversy." 28 USC § 1367(a).

¹ See original petition, application for temporary restraining order and temporary injunction and request for disclosures (**pet.**), **ex. 1**.

² See **pet.** ¶ 73, **ex. 1**.

³ See **pet.** ¶¶ 34–35, **ex. 1**.

⁴ See **pet.** ¶¶ 36–38, **ex. 1**.

⁵ See **pet.** ¶¶ 39–40, **ex. 1**.

⁶ See **pet.** ¶¶ 41–43, **ex. 1**.

⁷ See **pet.** ¶¶ 44–45, **ex. 1**.

⁸ See **pet.** ¶¶ 59–60, **ex. 1**.

⁹ See **pet.** ¶¶ 61–64, **ex. 1**.

¹⁰ See **pet.** ¶¶ 46–58, **ex. 1**.

¹¹ See **pet.** ¶¶ 66–67, **ex. 1**.

III. PROCEDURAL REQUIREMENTS SATISFIED

3. There is no indication Wilmington and/or Shellpoint have been served. Venue is proper in this court because the Southern District of Texas embraces the place in which the state court action was pending. 28 USC § 1441(a). Notice has been sent to the state court regarding the removal of this action. Pursuant to 28 USC § 1446(a), a true and correct copy of all of the process, pleadings, and orders on file in the state court action are attached as **exhibits 1–4**.

IV. CONCLUSION

4. The court may exercise federal question jurisdiction over this action because Lara and Godoy assert claim for violations of TILA, RESPA, and Regulation X.

Date: March 15, 2018

Respectfully submitted,

/s/ Michael J. McKleroy, Jr.

Michael J. McKleroy, Jr., SBN: 24000095

Attorney-in-Charge,

So. Dist. Bar No. 576095

C. Charles Townsend; SBN: 24028053

Of Counsel, So. Dist. Bar No. 1018722

Roxanne Hajikhani; SBN: 24091227

Of Counsel, So. Dist. Bar No. 3109857

AKERMAN LLP

2001 Ross Avenue, Suite 3600

Dallas, Texas 75201

Telephone: 214.720.4300

Facsimile: 214.981.9339

michael.mckleroy@akerman.com

charles.townsend@akerman.com

roxanne.hajikhani@akerman.com

**ATTORNEYS FOR DEFENDANTS
WILMINGTON SAVINGS FUND
SOCIETY, as trustee and SHELLPOINT
MORTGAGE SERVICING**

CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2018, a true and correct copy of the foregoing instrument was sent via the court's electronic filing system and as follows:

Robert "Chip" Lane
Joshua D. Gordon
The Lane Law Firm, PLLC
6200 Savoy Drive, Suite 1150
Houston, Texas 77036
VIA CM/ECF AND VIA
CERTIFIED MAIL RECEIPT
NO. 9414 7266 9904 2092 0145 19

/s/ Roxanne Hajikhani

Roxanne Hajikhani